

1 A bill to be entitled
2 An act relating to the tax on substitute communications
3 systems; amending s. 202.11, F.S.; deleting certain
4 definitions; amending s. 202.12, F.S.; deleting a
5 provision relating to the manner in which the tax on gross
6 receipts for communications services is applied to a
7 substitute communications system; amending ss. 202.16,
8 202.17, and 202.18, F.S.; correcting cross references;
9 amending s. 202.19, F.S.; deleting a provision authorizing
10 the imposition of a local communications services tax on
11 substitute communications systems; amending s. 203.01,
12 F.S.; deleting a provision authorizing the imposition of a
13 gross receipts tax on actual costs of operating substitute
14 communications systems; specifying that retroactive
15 operation is remedial and does not create any right to or
16 require any refunds; amending s. 624.105, F.S.; correcting
17 a cross reference; repealing s. 202.15, F.S., relating to
18 special rules for users of substitute communications
19 systems; providing for retroactive operation; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Subsections (2) through (15) of section 202.11,
25 Florida Statutes, are renumbered as subsections (1) through
26 (14), respectively, subsections (17) through (25) of said
27 section are renumbered as subsections (15) through (23),

28 respectively, and present subsections (1) and (16) of said
 29 section are amended to read:

30 202.11 Definitions.--As used in this chapter:

31 ~~(1) "Actual cost of operating a substitute communications~~
 32 ~~system" includes, but is not limited to, depreciation, interest,~~
 33 ~~maintenance, repair, and other expenses directly attributable to~~
 34 ~~the operation of such system. For purposes of this chapter, the~~
 35 ~~depreciation expense included in actual cost is the depreciation~~
 36 ~~expense claimed for federal income tax purposes. The total~~
 37 ~~amount of any payment required by a lease or rental contract or~~
 38 ~~agreement must be included within the actual cost of operating~~
 39 ~~the substitute communications system.~~

40 ~~(16) "Substitute communications system" means any~~
 41 ~~telephone system, or other system capable of providing~~
 42 ~~communications services, which a person purchases, installs,~~
 43 ~~rents, or leases for his or her own use to provide himself or~~
 44 ~~herself with services used as a substitute for any switched~~
 45 ~~service or dedicated facility by which a dealer of~~
 46 ~~communications services provides a communication path.~~

47 Section 2. Paragraphs (c), (d), and (e) of subsection (1)
 48 of section 202.12, Florida Statutes, are redesignated as
 49 paragraphs (b), (c), and (d), respectively, and present
 50 paragraph (b) of subsection (1) and subsection (2) of said
 51 section are amended to read:

52 202.12 Sales of communications services.--The Legislature
 53 finds that every person who engages in the business of selling
 54 communications services at retail in this state is exercising a
 55 taxable privilege. It is the intent of the Legislature that the

56 tax imposed by chapter 203 be administered as provided in this
 57 chapter.

58 (1) For the exercise of such privilege, a tax is levied on
 59 each taxable transaction, and the tax is due and payable as
 60 follows:

61 ~~(b) At the rate set forth in paragraph (a) on the actual~~
 62 ~~cost of operating a substitute communications system, to be paid~~
 63 ~~in accordance with s. 202.15. This paragraph does not apply to~~
 64 ~~the use by any dealer of his or her own communications system to~~
 65 ~~conduct a business of providing communications services or any~~
 66 ~~communications system operated by a county, a municipality, the~~
 67 ~~state, or any political subdivision of the state. The gross~~
 68 ~~receipts tax imposed by chapter 203 shall be applied to the same~~
 69 ~~costs, and remitted with the tax imposed by this paragraph.~~

70 (2) A dealer of taxable communications services shall
 71 bill, collect, and remit the taxes on communications services
 72 imposed pursuant to chapter 203 and this section at a combined
 73 rate that is the sum of the rate of tax on communications
 74 services prescribed in chapter 203 and the applicable rate of
 75 tax prescribed in this section. ~~Each dealer subject to the tax~~
 76 ~~provided in paragraph (1)(b) shall also remit the taxes imposed~~
 77 ~~pursuant to chapter 203 and this section on a combined basis.~~
 78 However, a dealer shall, in reporting each remittance to the
 79 department, identify the portion thereof which consists of taxes
 80 remitted pursuant to chapter 203. Return forms prescribed by the
 81 department shall facilitate such reporting.

82 Section 3. Paragraph (a) of subsection (1) of section
 83 202.16, Florida Statutes, is amended to read:

84 202.16 Payment.--The taxes imposed or administered under
 85 this chapter and chapter 203 shall be collected from all dealers
 86 of taxable communications services on the sale at retail in this
 87 state of communications services taxable under this chapter and
 88 chapter 203. The full amount of the taxes on a credit sale,
 89 installment sale, or sale made on any kind of deferred payment
 90 plan is due at the moment of the transaction in the same manner
 91 as a cash sale.

92 (1)(a) ~~Except as otherwise provided in ss. 202.12(1)(b)~~
 93 ~~and 202.15,~~ The taxes collected under this chapter and chapter
 94 203 shall be paid by the purchaser of the communications service
 95 and shall be collected from such person by the dealer of
 96 communications services.

97 Section 4. Subsection (6) of section 202.17, Florida
 98 Statutes, is amended to read:

99 202.17 Registration.--

100 (6) In addition to the certificate of registration, the
 101 department shall provide to each newly registered dealer an
 102 initial resale certificate that is valid for the remainder of
 103 the period of issuance. The department shall provide to each
 104 active dealer, ~~except persons registered pursuant to s. 202.15,~~
 105 an annual resale certificate. As used in this section, the term
 106 "active dealer" means a person who is registered with the
 107 department and who is required to file a return at least once
 108 during each applicable reporting period.

109 Section 5. Subsections (1) and (2) of section 202.18,
 110 Florida Statutes, are amended to read:

111 202.18 Allocation and disposition of tax proceeds.--The
 112 proceeds of the communications services taxes remitted under
 113 this chapter shall be treated as follows:

114 (1) The proceeds of the taxes remitted under s.
 115 202.12(1)(a) ~~and (b)~~ shall be divided as follows:

116 (a) The portion of such proceeds which constitutes gross
 117 receipts taxes, imposed at the rate prescribed in chapter 203,
 118 shall be deposited as provided by law and in accordance with s.
 119 9, Art. XII of the State Constitution.

120 (b) The remaining portion shall be distributed according
 121 to s. 212.20(6).

122 (2) The proceeds of the taxes remitted under s.
 123 202.12(1) (b) ~~(e)~~ shall be divided as follows:

124 (a) The portion of such proceeds which constitutes gross
 125 receipts taxes, imposed at the rate prescribed in chapter 203,
 126 shall be deposited as provided by law and in accordance with s.
 127 9, Art. XII of the State Constitution.

128 (b) Sixty-three percent of the remainder shall be
 129 allocated to the state and distributed pursuant to s. 212.20(6),
 130 except that the proceeds allocated pursuant to s. 212.20(6)(d)3.
 131 shall be prorated to the participating counties in the same
 132 proportion as that month's collection of the taxes and fees
 133 imposed pursuant to chapter 212 and paragraph (1)(b).

134 (c)1. During each calendar year, the remaining portion of
 135 such proceeds shall be transferred to the Local Government Half-
 136 cent Sales Tax Clearing Trust Fund and shall be allocated in the
 137 same proportion as the allocation of total receipts of the half-

138 cent sales tax under s. 218.61 and the emergency distribution
 139 under s. 218.65 in the prior state fiscal year.

140 2. The proportion of the proceeds allocated based on the
 141 emergency distribution under s. 218.65 shall be distributed
 142 pursuant to s. 218.65.

143 3. In each calendar year, the proportion of the proceeds
 144 allocated based on the half-cent sales tax under s. 218.61 shall
 145 be allocated to each county in the same proportion as the
 146 county's percentage of total sales tax allocation for the prior
 147 state fiscal year and distributed pursuant to s. 218.62.

148 4. The department shall distribute the appropriate amount
 149 to each municipality and county each month at the same time that
 150 local communications services taxes are distributed pursuant to
 151 subsection (3).

152 Section 6. Subsections (8) through (12) of section 202.19,
 153 Florida Statutes, are renumbered as subsections (7) through
 154 (11), respectively, and present subsection (7) of said section
 155 is amended to read:

156 202.19 Authorization to impose local communications
 157 services tax.--

158 ~~(7) Any tax imposed by a municipality, school board, or~~
 159 ~~county under this section also applies to the actual cost of~~
 160 ~~operating a substitute communications system, to be paid in~~
 161 ~~accordance with s. 202.15. This subsection does not apply to the~~
 162 ~~use by any provider of its own communications system to conduct~~
 163 ~~a business of providing communications services or to the use of~~
 164 ~~any communications system operated by a county, a municipality,~~
 165 ~~the state, or any political subdivision of the state.~~

166 Section 7. Paragraph (a) of subsection (1) of section
 167 203.01, Florida Statutes, is amended to read:

168 203.01 Tax on gross receipts for utility and
 169 communications services.--

170 (1)(a)1. Every person that receives payment for any
 171 utility service shall report by the last day of each month to
 172 the Department of Revenue, under oath of the secretary or some
 173 other officer of such person, the total amount of gross receipts
 174 derived from business done within this state, or between points
 175 within this state, for the preceding month and, at the same
 176 time, shall pay into the State Treasury an amount equal to a
 177 percentage of such gross receipts at the rate set forth in
 178 paragraph (b). Such collections shall be certified by the Chief
 179 Financial Officer upon the request of the State Board of
 180 Education.

181 2. A tax is levied on communications services as defined
 182 in s. 202.11(2)~~(3)~~. Such tax shall be applied to the same
 183 services and transactions as are subject to taxation under
 184 chapter 202, and to communications services that are subject to
 185 the exemption provided in s. 202.125(1). Such tax shall be
 186 applied to the sales price of communications services when sold
 187 at retail ~~and to the actual cost of operating substitute~~
 188 ~~communications systems~~, as such terms are defined in s. 202.11,
 189 shall be due and payable at the same time as the taxes imposed
 190 pursuant to chapter 202, and shall be administered and collected
 191 pursuant to the provisions of chapter 202.

192 Section 8. Section 624.105, Florida Statutes, is amended
 193 to read:

194 624.105 Waiver of customer liability.--Any regulated
 195 company as defined in s. 350.111, any electric utility as
 196 defined in s. 366.02(2), any utility as defined in s.
 197 367.021(12) or s. 367.022(2) and (7), and any provider of
 198 communications services as defined in s. 202.11(2)~~(3)~~ may charge
 199 for and include an optional waiver of liability provision in
 200 their customer contracts under which the entity agrees to waive
 201 all or a portion of the customer's liability for service from
 202 the entity for a defined period in the event of the customer's
 203 call to active military service, death, disability, involuntary
 204 unemployment, qualification for family leave, or similar
 205 qualifying event or condition. Such provisions may not be
 206 effective in the customer's contract with the entity unless
 207 affirmatively elected by the customer. No such provision shall
 208 constitute insurance so long as the provision is a contract
 209 between the entity and its customer.

210 Section 9. The retroactive application of the provisions
 211 of this act are remedial in nature and shall not be construed to
 212 create a right to a refund or to require a refund by any
 213 governmental entity of any tax, penalty, or interest remitted to
 214 the Department of Revenue on substitute communications systems
 215 prior to the effective date of this act.

216 Section 10. Section 202.15, Florida Statutes, is repealed.

217 Section 11. This act shall take effect upon becoming a law
 218 and shall apply retroactively to October 1, 2001.